

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO. 844 OF 2003

IN

SUMMARY SUIT NO. 2669 OF 2003

Navinchandra T. SAnghvi	Plffs.
VS.	
Rekha V. Mehta	Defnds.

D.H. Mehta a/w. N. Parekh for the plffs.

Shailesh Shah i/b. Nitya Sunil and Associates for the defendants.

CORAM: S.U. KAMDAR, J.

DATE : 30TH AUGUST, 2005.

P.C. :.

1. The present suit is filed on a promissory note for sum of Rs.5,50,000/- dated 16.4.2003. The defence raised is that the amount is not due and payable because prior to the execution of the said promissory note there was an MOU executed on 7.3.2003 between the plaintiff and one Mr. Yogesh

Mehta and Vijay Mehta. It is contended by the learned counsel for the defendant that on reading of the said MOU it is clear that all the disputes between the parties were settled and only sum of Rs,5,35,000/- was due and payable by the husband of the defendant and or family members of the defendant to the plaintiff. The said amount was to be paid in instalments.

2. My attention is also drawn to latter portion of Clause-4 which inter-alia provides that all documents such as cheques, promissory notes in the nature of mortgage should be treated as cancelled. It is the contention of the learned counsel for the defendant that the suit promissory note was infact executed prior to the said MOU was entered into on 7.3.2003 but the same was executed in blank. It is his further case that the plaintiff has forged the blank promissory note by filing up the details and putting the date as 16.4.2003. It is the further case of the defendant that infact even this promissory note is a fabricated document because the revenue stamp on which the signature appears

was lifted from some other document and pasted on this promissory note. On consideration of the defence raised by the defendant it is not possible to accept that the suit promissory note is invalid in law firstly because the MOU is dated 7.3.2003 whereas the promissory note is dated 16.4.2003. Thus the said promissory note could not have been part of the said settlement which has been arrived at prior to its execution. I have also perused the original promissory note. From the perusal of the original promissory note it is not possible to accept the contention of the defendant that the same is fabricated. In my opinion the defence raised by the defendant in the present suit is not bonafide and the same is moonshine. However with a view to grant an opportunity to defend I direct the defendants to deposit a sum of Rs.3.00 lac in the court within a period of 12 weeks from today. On such deposit of Rs.3.00 lacs the attachment before the judgment/statement levied on her residential flat will stand raised. In an event if the defendant fails to deposit the plaintiff will be entitled to the decree. The amount so deposited

will be invested by the Prothonotary and Senior Master in fixed deposit of any nationalised bank initially for a period of three years and renew the same from time to time till further orders.

3. If the amount is paid as aforestated, then suit is transferred to the list of Commercial Causes. Written statement or points of defence to be filed four weeks from today. Affidavits, list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on board of the learned Judge taking Commercial Causes.
